

Banishing Juvenile Solitary Confinement

A Call to Reform Michigan's Practices

By Deborah Paruch



The well-publicized case of Kalief Browder illustrates the devastating effects of solitary confinement on the many juveniles who are subjected to this treatment in the United States each year. On the evening of May 15, 2010, 16-year-old Kalief and his friend were on their way home from a party when they were arrested for robbery.¹ Unable to post bond, Kalief remained in jail following his arraignment. He was eventually transferred to the Rikers Island jail where he spent more than three years awaiting trial. During this time, he turned down several plea offers, consistently maintaining his innocence. He was released from jail in 2013 at the age of 20, when his case was dismissed for lack of evidence.²

More than two years of Kalief's imprisonment was spent in solitary confinement. He attempted suicide several times. His

attempts continued after his release; he ultimately succeeded in 2015 when he hung himself at his parents' home.³ In 2016, President Obama announced a ban on solitary confinement for juveniles in federal prisons, citing Kalief's suicide and his "constant struggle to recover from the trauma of being locked up alone for 23 hours a day."⁴

This article addresses the practice of subjecting juveniles to solitary confinement and its shattering effects on mental health. It presents the current state of national and international law on this issue and shows that Michigan's current practice of subjecting juveniles to extended periods of isolation violates international law, contradicts current trends in state and federal law, and is contrary to evolving standards of decency.

At a Glance:

The practice of subjecting juveniles to solitary confinement has been shown to have devastating effects on their mental health. This article presents the current state of national and international law on this issue and shows that Michigan's current practice of subjecting juveniles to extended periods of isolation violates international law, is against the current trends in state and federal law, and is contrary to evolving standards of decency.

The practice

Solitary confinement is defined as the physical and social isolation of an individual within a single cell for 22½ to 24 hours per day, with any remaining time generally spent in a barren yard or cage.⁵ There are two main classifications: punitive segregation employed as punishment, and administrative segregation employed when a prisoner is considered a safety risk.⁶ The conditions vary, but three factors are present in all solitary confinement schemes: "social isolation, reduced activity and environmental input, and loss of autonomy and control over almost all aspects of daily life."⁷ The resources that inmates receive while in solitary confinement are at the discretion of the individual facilities and the officers.⁸ While some facilities allow inmates to use books or self-educational materials, others deny access to these materials.⁹

Human Rights Watch and the American Civil Liberties Union report that "solitary confinement of youth is, today, a serious and widespread problem in the United States."¹⁰ These groups estimate that more than 95,000 youths were held in prisons and jails in 2011. They also report that a large percentage of these facilities use solitary confinement for extended periods. A 2012 survey from Texas found that most jails held juveniles in solitary confinement for six months to more than a year.¹¹

The effects of solitary confinement

The deleterious effects of solitary confinement were recognized in the United States soon after the Pennsylvania legislature authorized solitary confinement cells in 1790. Jurists referred to the practice as "a greater evil than certain death."¹² In 1890, United States Supreme Court Justice Samuel Freeman Miller, summarizing 100 years of experience with solitary confinement, stated:

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those

who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.¹³

Recent studies consistently report the psychological and physical effects of solitary confinement on prisoners.¹⁴ These symptoms and problematic behaviors include "[n]egative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity to stimuli, ruminations, cognitive dysfunction, hallucinations, loss of control, irritability, aggression and rage, paranoia, hopelessness, lethargy, depression, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behavior."¹⁵

The effects of solitary confinement on juveniles is even more alarming. Because adolescents' brains are still developing, they are particularly susceptible to the damaging effects of solitary confinement.¹⁶ A United States Attorney General task force reported:

Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement. . . . [J]uveniles experience symptoms of paranoia, anxiety, and depression even after very short periods of isolation. Confined youth who spend extended periods isolated are among the most likely to attempt or actually commit suicide. One national study found that among the suicides in juvenile facilities, half of the victims were in isolation at the time they took their own lives, and 62 percent of victims had a history of solitary confinement.¹⁷

Modern neuroscience research, utilizing MRI and fMRIs, has significantly advanced our knowledge of how the brain develops and matures during adolescence.¹⁸ Less is known about how deprivation of stimulation during adolescence affects the normal development of the brain. However, research shows that brain cells are wired to react to environmental conditions and can die in extreme settings such as long periods of solitary confinement¹⁹ and "even a few days of solitary confinement will predictably shift the [brain's] electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium."²⁰ Scientists have opined that there

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is “[g]ood reason to suspect that harsh conditions such as solitary confinement impair brain development during [adolescence].”²¹ Furthermore, neuroscience research on animal subjects has demonstrated that because adolescence is a time of increased neuronal and hormonal reactivity to stress, adolescent animals may be particularly sensitive to social isolation, resulting in long-lasting effects on brain structure and function.²²

Law and policy

International law

The United Nations pronounced solitary confinement of adolescents to be cruel, inhuman, or degrading treatment in its 1990 Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines.²³ This position was reasserted by the Special Rapporteur on Torture in his report to the General Assembly in 2011, where he called for an absolute ban on solitary confinement for juveniles.²⁴ These positions were reaffirmed in December 2015 in the Nelson Mandela Rules, which define solitary confinement as “22 hours or more a day without meaningful human contact” and prohibit solitary confinement for more than 15 consecutive days.²⁵

United States law

Federal administrative and professional responses

Federal agencies and professional organizations have come out against solitary confinement of juveniles. In 2016, President Obama issued an Executive Order banning the use of punitive solitary confinement on juveniles in federal prisons²⁶ following the Department of Justice’s recommendation that juveniles should not be subjected to isolation except as “a temporary measure in response to an act of serious violence.”²⁷

Professional groups have also called for an end to this practice. The American Academy of Child and Adolescent Psychiatry issued a 2012 policy statement opposing the solitary confinement of juveniles.²⁸ In 2017, the American Bar Association’s Criminal Justice Section called on legislative bodies and governmental agencies to end solitary confinement of adolescents except in cases of immediate harm.²⁹ In 2018, the Association of State Correctional Administrators called for the reduced use and reform of the system of administrative segregation.³⁰

The states’ experience

Recently, many states have passed laws limiting the use of solitary confinement of juveniles. Twenty-six states currently prohibit punitive solitary confinement, while fifteen states limit the time an adolescent may spend in punitive confinement.³¹ Other states have passed more comprehensive restrictions on this practice, including Colorado, California, and New Jersey.³²

Michigan is one of only seven states with no restrictions on solitary confinement of adolescents.³³ Michigan Department of Corrections policies provide that prisoners can be held in administrative solitary confinement for any length of time and are permitted to leave their cells for only one hour per day. They are not allowed calls or visits from friends or family.³⁴ The policies do not distinguish between juveniles and adult prisoners. The department does not keep statistics on juveniles in solitary confinement.³⁵

Litigation and constitutional challenges

Civil rights litigation has had some impact on the use of solitary confinement. Cases in New York, Mississippi, Ohio, and Illinois have resulted in settlements or judgments limiting the use of this practice on juveniles.³⁶ However, constitutional challenges have had less success. Although the Supreme Court has recently found violations of the Eighth Amendment with respect to juvenile sentencing,³⁷ it has not decided an Eighth Amendment conditions-of-confinement case involving juveniles. Furthermore, no other federal court has sustained a categorical challenge to the practice. Traditionally, courts held that isolation and the lack of environmental stimulation, absent evidence of actual physical harm, is not a serious enough deprivation to give rise to an Eighth Amendment violation.³⁸ However, a growing number of courts have split from this view, recognizing that social interaction and environmental stimulation are basic human needs that are cognizable under the Eighth Amendment.³⁹ Some of these recent cases involved juveniles.⁴⁰

Arguments and conclusion

Scholars and juvenile advocates argue that solitary confinement of juveniles is cruel and unusual punishment. They contend that juveniles are different from adults and merit different treatment. They cite to recent Supreme Court cases holding that the death penalty and automatic life in prison without parole for juveniles violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.⁴¹ They also argue that psychological harm, standing alone, is sufficient to meet the requisite legal test.

Advocates for abolishing this practice also argue that evolving standards of decency—as evidenced by international law, federal administrative law, federal agency opinions, the opinions of professional organizations, and the current trends in caselaw and state legislation—support the conclusion that the practice violates these standards of decency. As former United States Supreme Court Justice Anthony Kennedy recently remarked, “[T]he human toll wrought by extended terms of isolation long has been understood, and questioned.... There are indications of a new and growing awareness in the broader public of the subject of corrections and of solitary confinement in particular... consideration of the issues is needed.”⁴²

It is past time that Michigan legislators and prison officials address this issue and change the current policy to assure humane treatment of Michigan's imprisoned youth. ■

Deborah Paruch is a professor of law at the University of Detroit Mercy School of Law.

ENDNOTES

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